

Single Process Initiative

CONSIDERATION: APPLYING IT TO THE SINGLE PROCESS INITIATIVE

Regarding the Single Process Initiative, Under Secretary of Defense for Acquisition and Technology Dr. Paul Kaminski has reiterated (January 18, 1996 conference) that **the Government is entitled to consideration when there are one-sided savings** in the process:

“For most contracts that we have in place, there will be bilateral cost avoidance — that is, the savings will be passed directly to the government and, in the end, to the taxpayer. This occurs on cost-reimbursable contracts and cases where we have priced options that can be re-negotiated. In the case of longer term fixed-price contracts, there is a possibility of what I would describe as unilateral cost avoidance: savings would be realized by the contractor but the contract’s fixed-price structure has no mechanism to automatically pass along these savings to the government. In these unilateral cases, we would seek consideration either non-monetarily or as adjustments to the contract prices.”

For DCMC’s purposes, acceptable forms of consideration have not changed as a result of SPI policy. DCMC Administrative Contracting Officers (ACOs) deal with contractual issues and situations involving consideration on a daily basis. ACOs will continue to follow the applicable laws, regulations, and policies they have always adhered to. **ACOs should continue to seek consideration, when appropriate, in the prescribed manner they have used in the past.** For informational purposes, general principles are reiterated as they apply to consideration:

■ As a general statement, courts, boards, and the GAO have held that the government may not give up something it has bargained for without receiving consideration. **The adequacy of consideration is generally left to the discretion of the Contracting Officer**, although internal oversight organizations have reviewed, and occasionally criticized, Contracting Officers over the exercise of this discretion.

■ **Consideration may take several forms.** For example, consideration may be taken as reduced prices on current contracts, it may be taken as a cash refund to the government, it may be taken as a credit against existing claims, or it may be taken as a credit against contingent liabilities, etc.

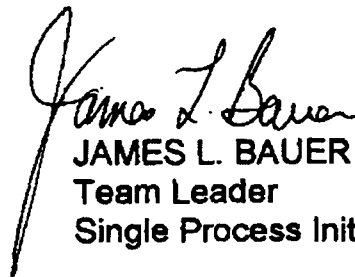
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Some of the consideration coming from a modification that moves a single process into a facility may be in the form of intangible benefits such as improved efficiency translating into lower operating costs and cost savings for both the contractor and the Government. These benefits, while difficult to quantify on a contract-by-contract basis, could form part of the consideration for block change modifications.

How consideration is taken is a matter left to the sole discretion of the Contracting Officer. The Contracting Officer is limited in fashioning a solution to the issue of consideration to what is in the best interests of the Government, his/her creativity, and the willingness of the contractor to negotiate the issue.

*Please note: Contractors may offer consideration in the form of goods or services. Done properly, this can be an effective and appropriate method of obtaining consideration. In fact, this method is not new or different from what has been used in the recent past. However, care must be taken to avoid augmentation of appropriations. It is recommended that consideration of this sort be closely coordinated with customers (PCOs) and District SPI Points of Contact or SWAT Team members (Legal, ACOs, Cost and Price Analysts, etc).

■ Consideration is normally recited in contracts and modifications to contracts. The parties should spell out in all block change modifications the consideration they have agreed to, which includes the tangible and intangible benefits the parties expect to receive by moving to the common process. For example, the modification could detail the mutually-agreed-to level of performance commensurate with the replaced milspec or standard. Any contractor monitoring data accumulation, reporting or start up/transition efforts could also be described. Contracting Officers should use good judgment and sound discretion in determining the adequacy of consideration (benefit) and how best to describe it in the modification. Questions concerning the Single Process Initiative can be addressed to the Single Process Initiative Team at (703) 767-2471 or DSN 427-2471.



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